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University of Michigan Law School

Grin And Bear It

The Res Gestae

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Law Students Socked With Computer Fee

By Linda Kim

With all the talk about the new $50 computer fee being charged to every University of Michigan student this semester, law students in turn have started to ask what they'll get out of it and what's available to them right now in the way of computing.

Assistant Dean Sue Eklund said she doesn't know yet how much of the money will come back to the law school. "Basically it will be a process of the law school making its case to the central administration about the needs of the law students," she said.

With the "information technology fee," as it is officially called, going up to $100 next semester, the law school will be contributing about $114,000 to the University-wide fund each semester.

The fee has met with mixed reactions. While some say it will finance a long overdue expansion of computer services to students, others question the lack of student input on the fee and whether everyone should pay when not everyone uses the computers.

"It's difficult anytime you single out a single-purpose fee," Eklund said, but added that the fee has potential. "If you think computers have value, it will give more opportunities than before."

The law school does already have computers available for student use, paid for out of its own budget. These include six Zeniths, similar to IBM PCs, in the LEXIS/WESTLAW room on sub-2 of the library, and one with a printer in Room 109 of the Legal Research Building.

The law school also has a computer consultant, Greg Napoleon, who explained that these computers are not connected with the library in any way, as LEXIS and WESTLAW are, but are housed there for convenience.

Any law student can use these computers; software can be checked out from the reserve desk of the library if a student doesn't have his or her own.

According to Napoleon, these computers have been enough to handle law student demand, except during the last few weeks of the semester when everyone is writing papers.

"There are enough computers now for the kind of low-level daily use," he said, adding that students can also go to any of the other terminals on campus, such as the union, if the oneshere are unavailable.

There is some expansion planned, though Napoleon said this is unrelated to the computer fee. Additions will include more software and a letter-quality printer.

For anyone having problems with the computers, Napoleon is the one to help out. Employed by the law school on a three-quarter time basis, he helps students, professors and staff with their computer troubles.

Although not always easy to catch, Napoleon keeps hours from 10 a.m. to 2 p.m., and 1 to 5 p.m. in Room 109 of the Legal

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Kamisar And Grano Argue Miranda's Vitality

By Laura Bradshaw

An organized debate turned into a war of rhetoric Thursday when UM professor Yale Kamisar and Wayne State University professor Joe Grano attacked the question, "Was Miranda a Mistake?"

Prof. Kamisar, a proponent of Miranda even before the decision was announced, argued that the so-called Miranda rights are constitutionally required and that any abandonment of the current rule would lead to the excesses of the 1930s when police abused their power, questioning suspects for hours on end.

Prof. Grano urged a return, not to the time of police abuse, but to a system of "voluntariness" in which the confessions of criminals could be used to secure their conviction.

Citing a recent Supreme Court decision, Grano stated that the Miranda rights are no more than a "prophylactic" rule created by the courts and imposed illegally on the states. The Miranda decision, he said, was an illegitimate exercise in power by the Supreme Court, and, if deemed legitimate, can only be found so by a strained reading of the Constitution , and finally that public policy is against such a reading.

At the crux of his argument was a decision in which a violation of the Miranda rule by the police was not termed a violation of the Constitution.

If the Miranda rule is not constitutionally mandated, Grano said, then it is no more than black letter law, and while the courts may establish such laws when an infringement of the law would equal a violation of the constitution — as in Brown v. Board of Education or Roe v. Wade — without the constitutional requirement the law is no more than an abuse of power.

"To say that a violation of Miranda equals a violation of the Constitution is to say that in each and every case in which Miranda is violated, a suspect has been compelled to be a witness against himself ... To buy Miranda witho" -eading it as a prophylactic decision you h to buy it as stating that the mere questi.. What happened?' is enough to violat the 5th Amendment."

He added that the mischief Miranda seeks to prevent seems to be coercion, but if it is coercion, what are "the proper rules of battle" when the government interrogates someone.

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Computers On Sub-One

By Dave Purcell

The Law School Student Senate grappled with the tough issues of tbe proposed "flyback break" and the proposed general-use computer facility on S-1 at its meeting on Monday night.

After a lengthy discussion of the Curriculum Committee's questionnaire, the Senate came to no firm conclusion on the desirability of cancelling four class days for a "flyback break." However, no one was excited about the proposal stating that all the alternatives offered for making up the four days (starting earlier in August, speeding up the pace of courses, going to classes on four non-football Saturdays, and cutting December reading days) were unacceptable. The only general concensus reached on the issue, although no resolution was voted on, was that a two-day "October break" was a desirable scheduling change. The shorter break would allow students time to either flyback to firms or allow students breathing room in the crowded fall semester.

Eric Hard went on to remark that it is "the laugh of the year" that the faculty believes that students miss classes only because of flybacks and added that a flyback break would not help the class attendance problem. A few Senators also voiced concern that a flyback break will make an already easy process even easier for those students going into large corporate firms and that the faculty was encouraging student employment in such firms by expressing a desire to see classes cancelled for four flyback days.

Amid hisses from the other senate members, President Russell Smith brought up the proposed computer facilities on S-1. The University is proposing to develop an unused portion of that floor for a computer room open to all university students. The faculty has voiced three major concerns to Smith: 1) the protection of the book collection on S-1, 2) the minimization of traffic flow in the area, and 3) adequate security in the underground portion of the library. In response to these concerns, the Senate passed a resolution stating that any computer facility on S-1 would have to provide for a separate entrance, priority use for law students, and restricted access, either in terms of students allowed to use the facility or hours of use.

Finally, a representative of a coalition of students trying to start an Immigration Law Clinic spoke to the Senate seeking recognition for the newly formed organization and use of the Senate's telephone. The Senate passed a resolution allowing members of the group to use the Senate's phone contingent on an agreement to deposit money in an account from which money for the calls would be taken.

ACLU Heads Off Sweeps

By Jim Komie

In a speech last Wednesday night, Barbara Harvey, state legal director for the ACLU, claimed victory in the Detroit school search controversy. The Detroit School Board has agreed to suspend the sweep searches pending the outcome of the litigation currently underway. "So, we've really won already and will win in the end," Harvey said.

The controversy began when the Detroit School Board, faced with an increase in violence in Detroit high schools, instituted a policy of sweep searches, beginning in 1984. Detroit police conducted a series of school-wide searches for weapons.

Police would round up students as they came to school and search them for weapons with a hand-held magnetomiter, an instrument designed to detect metal objects. If the magnetomiter went off, the student would have to empty the entire contents of his or her pockets or purse onto a table.

Harvey contrasted the technique of the Detroit police with that used in airports. At an airport, passengers are searched by "walk-through" metal detectors, which Harvey claimed are far less intrusive of an individual's privacy. Additionally, if a passenger sets off a detector, he or she may empty their pockets themselves piece by piece until they don't set off the detector.

Harvey claimed that Detroit police made students empty out the entire contents of their pockets because the police were looking for

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The Res Gestae

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"Must Be A Gut"

The English would accuse them of "bad form." We would just call them typical law-school lowlifes.

We're adverting to the people who insist on marking up the posted grade sheets on the bulletin board in Hutchins Hall. These people do us the disservice of figuring out how many of each grade a professor has given and the grade point average of the class. They also can't resist pithy editorial comments like "Must be a gut."

But, when it comes to guts, it's these ghost commentators that have none. If someone thinks that a professor's curve is too high, then he or she should write a letter to the R.G., or talk to the professor of Dean Sandalow.

The idea is to get a public discussion going. Whether the law school should have a standard curve is an important issue. We've heard rumors that Harvard's curve is a few tenths higher than here at Michigan. And, as grades are important to most people only in how they relate to those of others, the level the standard curve is set at is important.

But the words "Must be a gut" don't tell the administration that students are dissatisfied with grading policies. To the contrary, such comments are wholly destructive.

For one, they discourage professors from posting grades in public. If Professor X is worried anyway that his curve is too high or too low, such blatantly calculating calculations will make him not post next semester. And as we believe that students have a right to see how their professors grade, these ghost commentators should put down their pens.

Such comments also give students guilty feelings about taking "gut" courses. But it is possible that a student is taking Mass Media because he or she is interested in communications law, rather than because the curve (allegedly) is high.

Finally, we dislike such comments because they encourage competition in the law school, and nurture obsession with grades. Such comments smack of all the bad things people generally think about law students.

We're supposedly here to develop our minds and to gain expertise in law, not to beat other students on exams. The ghost commentators are wrong if they think that learning to compete is what learning to think like a lawyer is all about.

Opinion

Of Religion And Politics

By John Nagle

Ray Kroc, the founder of McDonald's, was once quoted as saying, "I believe in God, family, and McDonald's – and in the office that order is reversed." Maybe he was being facetious; maybe he wasn't. Whatever his intention, he succinctly expressed a trend that is changing the character of our society, yet a trend that is subtle by its very nature. The trivialization of religion is upon us.

How can I suggest that religion has become trivial? The appearances suggest otherwise. The Reverend Jesse Jackson presented a forceful challenge for the Democratic presidential nomination in 1984, while Pat Robertson is contemplating a try for the Republican nomination in 1988. The Supreme Court has been presented with more church-state controversies in its last two terms than during the first century and a half of the nation. The media is full of stories about how the "Christian right" has become a potent lobbying force involved in an imposing array of issues in a countless number of forums. All the signs seem to indicate that "religious interests" are becoming a force to be reckoned with.

But look closer. Two current trends demonstrate how faith is being trivialized even as "religious interests" are more prominent. Society either segregates geniune religious convictions apart from values arising from other sources or it patiently indulges quaint religious observances because they are not threatening. The result is the same in both instances: religious beliefs are kept from influencing the society around them.

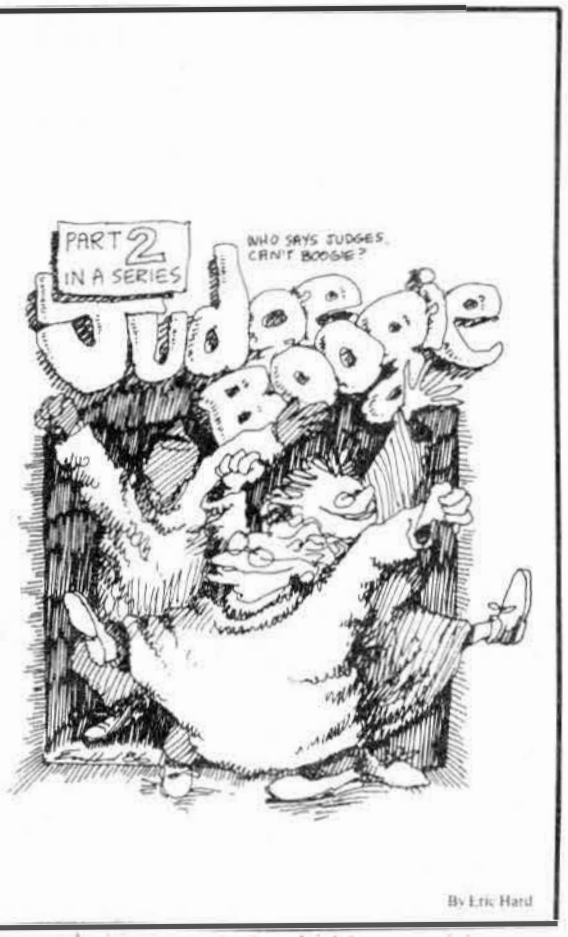
Let me address the segregation aspect first. Segregation asserts that religious beliefs are acceptable – in their place. Today that place is confined to the church or the home. It is thought to be inappropriate to allow faith to determine one's conduct in school or on the job. The image is one of medieval monks in a deep and dusty monastery, faithfully carrying out their spiritual exercises as they were carefully isolated from the surrounding world.

I recently was told a story about a young boy who was just beginning kindergarten. His teacher asked the class what song they would like to sing and the boy eagerly replied, "Jesus Loves Me" – a song he had learned in Sunday school. The teacher, of course, quickly explained that those songs were not to be sung in school – only at home or church. The complexities of the Establishment Clause were probably lost on this five year old. Instead, the message that he was likely to bring home was that it is inappropriate to express one's faith in a public setting.

The other element of trivialization is the indulgence of meaningless religious customs. Such customs frequently come under the rubric of civil religion: a collection of pietistic rituals whose lack of offensiveness are rivaled only by their lack of meaning. President Eisenhower exemplified this position. He has been described as a "fervent believer in a very vague religion," a religion whose tenets were "honesty, decency, fairness, service – all that sort of thing." This faith could be tolerated because it could mean all things to all people. But contrast Eisenhower with the challenge Bishop Tutu's ministry has brought to South Africa. Tutu's faith can hardly be described as meaningless, nor can it be said to have been indulged. We do live in a culture that aggressively labors to keep religion in its place.

One Supreme Court decision demonstrates how far we have come toward trivializing religious convictions. **Marsh v. Donnelly** upheld the constitutionality of a creche displayed on city property. Why was this acceptable? The creche was displayed for secular purposes. Lest it prompt some thought of the sigmficance of its figures, the creche was given equal billing with Santa Claus, reindeer, and elves. And as the crowning touch, the Court referred to the creche – the depiction of the baby Jesus – as "one passive symbol." The same Jesus who proclaimed, "I am the way, and the truth, and the life," was held to be a passive symhol. Trivialization indeed.

Should faith be "de-trivialized?" I believe so. The debate over these issues has suffered from the confusion of two quite distinct issues: mixing church and state and mixing religious convictions and public policy. The means of the state should not be co-opted to produce adherents for the church – and vice versa. But it is quite a different proposition to suggest that one's faith cannot influence one's approach to issues of public concern. It is dangerous and foolish to assert that religious convictions impermissibly taint public decisions. The beliefs of some compel them to oppose abortion and pornography. The beliefs of others compel them to oppose apartheid and the arms race. Criticism should be directed at the proposals themselves, not the motivation of their proponents. For we will all benefit from bringing diverse perspectives to bear on the difficult questions that confront our society at this time.



By Eric Hard

Lambert Takes RG To Task

To the Editor:

I wish to make a correction in your article on computers and the Student Senate. Your reporter arrived late and seems to have missed part of my report. Computer classes at the School of Education building are not just available if we can get a group of 15 students together. Free classes on all aspects of computer training are available at the SEB for *any student*. They are held at a variety of times and dates. Class schedules are available there and there is also one in the LSSS office if anyone is interested. Hopefully we will soon have several hundred copies of these schedules for distribution to law students.

The 15 person requirement is only necessary if we want a specialized course of and for law students taught at a special time. There will be more discussion on that idea later.

Amy Lambert
3rd year Representative

Editor's Note: Our reporter arrived late because I gave him an incorrect starting time for the meeting. SRH.

Forum

Politics As Usual In Court Appointments

By Reid Rozen

It was predictable. With the start of the new year came the deafening sound of resolutions breaking all across the country, the defeat of the Big Ten representative in the Rose Bowl, and the deluge of predictions for the coming twelve months. Whereas the best predictions are always to be found in the pages of supermarket tabloids, in which psychics augur with the aid of bird entrails, crystal balls, and conversations with the ouija-bored Elvis Presley, respected academics and social commentators also bring forth their forecasts for the year.

One of these "futurists" (an odious term which supposedly elevates the educated guesser above the entrail-diviners and common coin-flippers) predicted that, in 1986, Ronald Reagan will be in a position to nominate someone for a seat on the Supreme Court. It was not made clear who would be leaving the bench, but the justice-to-be-named-later will be replaced, according to the eminent futurist, by current Attorney-General Edwin Meese.

Usually, such a prediction would merit the same credibility as "Phil Donahue will be named ambassador to the U.N. and have a torrid love affair with Margaret Thatcher." However, given the Reagan administration's attitude toward judicial appointments, the prospect of Meese in judicial ermine should be taken seriously.

The selection of Meese to the high court would be in keeping with the president's policy of placing ideological fellow-travelers into positions on the federal bench. With dizzying regularity, Reagan has nominated judicial conservatives to the courts. It is estimated that by the end of his second term, the president's appointees will be perched in over half of all federal court seats.

Critics contend that the process by which nominees are selected emphasizes political philosophy over judicial qualifications, citing as an example the appointment of former senator James Buckley to a judgeship in the D.C. circuit. If there is, in fact, an ideological "litmus test" which potential federal judges must pass before being nominated by the president, its specifics are unknown. That there is a definite conservative bias among Reagan's appointees is clear, but Reagan did not invent the practice of choosing like-minded individuals for judicial posts. He simply has refined the process in hopes of avoiding the same kind of mistake made by Dwight D. Eisenhower, who had a notion that Earl Warren was some kind of strict constructionist.

Reagan cannot afford to make that kind of error if he intends to accomplish his goal of changing the ideological complexion of the federal judiciary. And despite the wails of protest from the opposition party, the Democrats will probably resort to the same kind of procedure to choose judicial nominees, if only to counteract the effects of Reagan's policies, when they put a candidate in the White House. The courts never have been insulated from politics, and as long as the system remains unchanged politics will play a large part in the choice of every federal judge. Critics may lament the politicization of the nominating process under Reagan, but the real source of their dismay is not the role of politics in the appointment of federal judges, but rather the efficiency with which the system works under the current administration.

Even the most stringent ideological exam does not, however, guarantee that the administration will ultimately be satisfied with its choices. Judicial appointees, once confirmed in their posts, often have the annoying habit of displaying more political independence than was their wont prior to gaining a lifetime of employment with the courts. Jefferson, Teddy Roosevelt, Eisenhower, and Ford are just a few of the presidents who lived to regret the appointments they made. It is my fondest hope that America will not have to regret the choice of Edwin Meese to the Supreme Court. We would be better served with a more rational choice, like perhaps Phil Donahue in the post of ambassador to the U.N.

Lodahl Examines Medical Malpractice

By Andrea Lodahl

In late 1984, doctors began demanding relief from what they characterize as the "malpractice crisis" they are facing in this country. Doctors have declared their decision to seek legislative reforms by refusing to perform medical services in their specialty until liability caps are enacted. Before we accept the idea that the government must promise to act as a shield between doctors and their patients, it may be wise to review some relevant facts and frequently cited "causes" of the malpractice crisis, and try to imagine other possible avenues for reform of malpractice law. First, it makes sense to address some common viewpoints regarding malpractice claims: 1) that they are caused by overzealous lawyers seeking a share of the recovery, and by the availability of insurance to assure such a recovery; 2) that doctors' backs are breaking under the financial strain of malpractice insurance; and 3) that the prospect of doctors being driven out of business by malpractice is a real possibility that should spur us to support legislative caps on doctor liability. We may find that doctors are not facing economic hardship by any sensible standard, malpractice insurance notwithstanding; that doctors face this problem in part because of a failure to self-police; and that the "incentives" system for lawyers represented by the contingent fee does not, of itself, encourage the filing of meritless suits. We may also discover that malpractice suits have dramatically grown in number and that malpractice insurance has dramatically increased in cost, suggesting that something *is* wrong in the system.

Malpractice suits are on the rise, there's no doubt about it. Between 1970 and 1975, the average award or settlement increased from $5,000 to $26,000; it is now $330,000. In 1975 there were five malpractice claims for every 100 doctors; in 1983 there were 16. Malpractice insurance now costs 55,000 a year for obstetricians on Long Island and over $100,000 for a neurosurgeon. (These figures are from an article in *The New Republic*, June 24, 1985.)

Doctors are frightened and angry about the annual leaps in malpractice suits being filed, and their first impulse is to see the problem as a doctor-lawyer war. Curiously, they do not seem to think their patients have the will to sue them apart from the influence of the legal profession. In an article in the September 30, 1985 *Newsweek*, for example, one doctor angrily facing the possibility of malpractice charges says, after speculating that in a different time the facts of his case would be a "parable," "but today it's just the beginning of the litigation, the search for blame and recompense. The man's family was understandably grief-stricken. As human nature goes, their grief became anger." So far, so good. But here comes the kicker in the chain of causation: "Perhaps they ran across the advertisements for free legal consultations to people who may have a claim against the medical establishment...". This doctor goes on to speculate that the existence of malpractice insurance invites lawsuits.

First, practically nobody in this society is so out of touch with reality that they don't know about skyrocketing malpractice awards. It doesn't take a nasty lawyer's ad to make them think of a lawsuit. Americans are traditionally extremely litigious, even with neighbors and family. Offering a free consultation is simply competitive behavior. To focus on this is to misdirect the anguish of being sued. Although lawyers have almost certainly contributed to the lawsuit-mad aspects of our society, the damage is long since done.

As for the insurance, the same reasoning could be applied to whether the existence of auto insurance doesn't invite whiplash claims. It probably does encourage filing those claims, but the claims would never be filed at all unless there was an "accident"; something has to go wrong before filing a suit promises the possibility of recoveries. One could agree that insurance incentives actually encourage malpractice (or reckless driving), by promising to spread the costs of one person's negligence over everyone who engages in the activity. Sure, if a doctor was penniless it might not be worth filing a lawsuit, but so few of them are... and they all have pretty good future earnings to garnish, too. As we will discuss later, it's not so much the existence of liability coverage as the practices of the insurance industry that have fueled the lawsuits. The fact that there's money there doesn't itself encourage meritless suits, especially under contingent fee arrangements.

The much-bemoaned lawyer's contingent fee is the meticulous doctor's friend. The contingent fee does a lot to weed out completely meritless suits — suits that angry, grieved families might well file if lawyers worked for free. Why? Because unbeknownst to the average person, it's not true that "win or lose, the lawyer gets paid." Doctors are often eager, as Frank J. Edwards was in his *Newsweek* piece, to cite the fact that lawyers' "contingency fees generally reap one-third of any money awarded their clients." They never explain what the word "contingent" means: any payment at all is contingent on obtaining a recovery, either through settlement or victory in court. If the client loses, the lawyer swallows not only his own time but all of his costs in preparing for the suit. The lawyer has the greatest possible incentive, therefore, to avoid "hopeless suits. It's as if a doctor only got paid if the patient was cured. (Of course, not all malpractice suits are handled on a contingency basis, but the vast majority of them are, as are personal injury suits of all kinds.) Without the contingency fee, it is true, most plaintiffs could not afford to bring suit against a doctor at all — not even plaintiffs with legitimate claims.

This brings us back to Dr. Edwards' "blame and recompense." To listen to a lot of doctors, you'd think that every last malpractice suit was meritless — that the healthy kidney was never removed instead of the diseased one, that instruments are never left inside a patient (to name only the most outrageous cases taught in law schools.) We can only wish that doctors were in fact so godlike. Defects, errors, and oversights exist in medicine just as they do in law (where malpractice claims are also thriving) or in any other field. Our traditional notions of civil liability do not state that an individual must never err, only that as between a person who is negligent and an innocent victim of that negligence, it seems right to allocate the cost to the negligent person. I wonder how many doctors support liability for a company that manufactured and sold thalidomide — is this, too, a subject for "parable" rather than "blame and recompense"?

Doctors, in fact, should count themselves lucky — they still are assessed liability only for negligence. The newest era of law favors completely ignoring fault, and simply allocating costs to those who reap the profits from the industry — a principle known as "strict" or "enterprise" liability. Although such ideas have not yet been proposed for professional "industries," it is not immediately apparent why the two should be treated differently. They *are* treated differently, though: a strict liability plaintiff must only prove that the defective product caused the injury, where the malpractice plaintiff must show that according to prevailing medical standards, what the doctor did was negligent (and, additionally, that the negligence caused the injury). Profit should not be overlooked in sensibly discussing the malpractice

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Forum

Medical Malpractice Rates Explored, Exposed

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"crisis." Orthopedists and obstetricians effectively went on strike this summer to demand liability ceilings from the legislature, saying that they have been forced to restrict their practices because they cannot afford the insurance premiums. Yet the *New Republic* notes that as a percentage of health care costs, malpractice premiums have held steady at about one-half of one percent. The average doctor spends only 2.9 percent of his gross income on malpractice premiums — and spends 2.3 percent on "professional car upkeep." That gross income, for the average doctor, is $200,000; office expenses absord about half that figure. The high-risk, high-premiums specialties mnke much more.

So, looking to Dr. Edwards' *Newsweek* piece, we find that "every month I send off a malpractice premium that nearly equals my mortage payment, that nearly equals the payment of my school loans." The insurance rates in his specialty, Edwards says, have gone up 40% this year. His specialty is emergency-room medicine, a close reading of the article reveals. Emergency-room medicine, though I have no hard figures, seems likely to be among the high-risk, high-error areas of practice. I suspect it is also more lucrative than many other specialties. Obstetrical insurance is so high because of its high degree of risk. According to a *US News and World Report* article (Feb. 13, 1984), Richard Shaddell of the New York State Trial Lawyers' Association asserts that up to one fourth of the 600,000 Americans institutionalized with brain damage are there because of obstetrical negligence. Statements like Edwards' make the malpractice situation sound outrageous; the average figures go a long way in providing an overall perspective

To take an economist's view for just a moment, it is possible that the cost of malpractice insurance (or self-insurance) bids up fees in certain specialties substantially. It also, according to the doctors, makes them order more ("unnecessary") tests in an attempt to avoid liability — so-called "defensive medicine." The question is whether consumers of medicine are willing to pay that extra amount in return for the opportunity to recover if they should be damaged in the course of their medical treatment, or whether they'd prefer the legislature intervening. Defensive medicine may well be preferable to non-defensive medicine, for a particular patient being diagnosed: first diagnosis accuracy rates are notoriously low. And we have seen that malpractice costs to the patient have not risen appreciably as a percentage of a given doctor's bill (although overall costs have increased dramatically. In fact, doctor's bills have increased at a rate above inflation in the past ten years.) If some doctors are driven out of business, maybe that's fine— doctors with so many malpractice claims that they cannot stay in business probably shouldn't be practicing. If a doctor can find more lucrative employment, she should certainly pursue it — it's hard to believe that with a $100,000 net on average, we'll run out of doctors.

Of course, this economic argument suffers from the same defects that economic-distribution arguments have — people on average might not suffer unduly, but some poor people in Albany with babies they need delivered may suffer a lot. That is true. The exponential increase in malpractice awards probably does signal some things amiss, and those things bear exploring.

Insurance industry practices probably are a big part of the problem if reduction of the incentives for questionable suits is our goal. Insurance companies, unlike doctors, care nothing about the outcome of a case from the reputation standpoint. Their mode of operation takes a short-run, probability-oriented view; if the odds are good, or even substantial, that a plaintiff could win in court the insurance company is better off settling. Therefore, the plaintiff who "has a case" (as Dr. Edwards acknowledged his probable plaintiff did), and that plaintiff's la yer, can benefit from the insurer playing the averages and receive some money, out of court, even if they don't have a clearly winning case. The insurance company simply raises the doctor's rates and absorbs its loss, knowing that if it went to trial and lost it would spend (and lose) a lot more in the process.

This insurance practice has fueled the whole personal-injury boom. The irony is that while the odds "pay off" for the short run, in the long run the insurers are hurting themselves by dramatically increasing the number of suits filed against them. Now, some of them want out of the malpractice business altogether. Maybe a legislative solution could try to target this problem specifically. Then, there's always the radical possibility of havi g nonprofit insurers — like the government — take over the health care field.

Another problem lies in the sums being paid out as awards in mnlpractice cases. The most appealing element of the legislative solutions suggested by doctors are the limitations on "pain and suffering" damages. It is this element of damages that has bloomed the most, suggesting that juries must either think that malpractice hurts a lot more than it used to or that pain is worth a lot more money than it used to be; alternatively, they may be using pain and suffering damages for another purpose altogether. I think the latter is the strongest possibility. The "pain and suffering" category is probably a repository for the anger towards the doctor that would have once been called "punitivedamages." It is a basic tenet of civil liability in this country that punitive damages are inappropriate for negligent (as opposed to intentional) behavior; only reimbursement for the claimant's actual damage (medical bills, wages lost because of the negligence, lost future earnings because of disability, and the like) should be awarded. Although it is ostensibly the province of judges to overturn unreasonable or wrongly-based damage awards, there's evidence in the award increases that suggests they're not doing their job. It looks as though someone else may have to act. Because pain and suffering damages are so hard to quantify, and because a casual empirical time study strongly suggests that pain and damage awards are being abused, the amount awardable for them should probably be limited as a matter of legal policy. Perhaps, alternatively, they could be conditi onedon the presence of special circumstances, spelled out explicitly enough to give reviewing courts clear guidelines for overturning excessive awards.

Finally, the reluctance of doctors to effectively police themselves bears criticism. Now, true, you can find doctors who will gladly testify against other doctors for a fee. But for years and years, doctors had a professional "huddy system" that made it literally impossible to obtain a doctor to testify that another doctor's practices were negligent, even in the most egregious cases imaginable, like removing the healthy kidney instead of the diseased one. Even now, I'm willing to surmise that doctors who testify against doctors get a chilly reception at the country club, rather than thanks from their fellows. Doctors must accept the fact that there ARE "bad doctors," doctors with dozens or even hundreds of real victims. Those doctors should not be shielded hy their peers or by the legislature.

If they want to reduce malpractice premiums, doctors could start with a far more aggressive campaign of self-policing. The Moore-Gephart hill, which died in Congress, proposed sending doctors whose patients required compensation for malpractice before a peer review board. Such a proposal (referred to in Edwards' article) would go far towards reducing spiraling insurance costs and damages awards — if the board had, and wasn't afraid to use, some teeth (like taking away licenses). Methods for cutting out the insurer-lawyer "middlemen" by making direct awards out of a pool funded by levies on doctors has also been suggested. This might work, and dramatically reduce costs, but only if doctors are willing to forego vigorously defending themselves in every case. Finally, it has been suggested that doctors compile data on doctors with numerous malpractice claims against them. This would demonstrate that doctors also care about incompetence.

It may well be true that unscrupulous lawyers have helped to drive the malpractice frenzy; many lawyers do, if fact, make their living from successfully steering patients through malpractice suits. But lawyers are a little too easy to hate. Maybe they *are* a little like vultures; it's still shocking when the public allows a spectacle like lawyers flocking to India after the chemical disaster to distract them from the very great probability that a negligent company killed thousands of people there. Similarly, doctors should know better than to let the admittedly unattractive spectacle of ambulance-chasers make them complacent about negligence in the operating room. Doctors look the other way too often when drugs, alcohol, family problems, or other clear signals suggest that a colleague isn't up to par. Legislative relief in the form of overall liability caps simply sanctions the practice of saying "There but for the grace of God go I."

Kamisar: Police Still Cannot Read Miranda Cards

From page one

He said that if Miranda is based on the fifth amendment right against self-incrimination, our attitude to the Fifth Amendment is hypocritical as we routinely allow "deceit and treachery" before arrest.

"It's hard to argue deceit and trickery after custody is more abhorrent than deceit and trickery before custody."

Grano also stated there is a gap in Miranda's reasoning. "Nowhere in the decision does it say that the suspect should be protected against the mere pressure that inheres in custodial interrogation . . . why should the defendant be protected against this?" he asked. He noted the 5th Amendment does not protect against all pressure.

In his rebuttal, Prof. Kamisar accused Grano of wanting to turn the clock back to "the old voluntary standard" without offering any program to ensure past abuses of individual rights do not recur. "The title of this debate should not be 'Was Miranda a Mistake,' but "Was Miranda a Mistake, Compared to What?' " Kamisar said.

He attacked the Supreme Court case cited by Grano as a misinterpretating the Miranda decision, which, he said, was required by the language of the Constitutton.

Kamisar dismissed any argument against Miranda that is based on the theory that Miranda is based on erroneous fact, noting "you can do that to any case."

Grano argued that the fruit of Miranda is "legalistic, mechanistic law under which we have stopped asking whether the defendant is compelled, but who spoke first, the defendant or the interrogating officer."

In response to Grano's earlier question on what evil Miranda seeks to prevent, Kamisar stated flatly that compulsion is the evil, giving as an example a situaton in which a suspect is brought down to the police station and given the impression that unless he cooperates something will happen to him. "If that guy is not being compelled to incriminate himself, then there's no rain in Indianapolis," Kamisar said.

He added that any trouble with Miranda occurs outside the police station, and noted he finds it "astonishing that after 20 years of walking around with these cards, the cops still can't read the goddamn cards right."

Kamisar found hypocrisy in Grano's position, noting "we won't let a guy plead guilty without a lawyer," but we would let him incriminate himself without one.

In his closing, Kamisar reaffirmed his belief in the constitutionality of Miranda. "Miranda said whether a person in inherently, implicity or informally compelled, he is compelled within the meaning of the 5th Amendment."

The hour and a half debate, "moderated" by Prof. Jerold Israel, was followed by a question and answer period.

want a foreigner driving us —

Res Gestae

Computer Fee Continues To Climb Next Semester

From page one

Research Building or the Law School Fund office. He can also be reached by leaving a message at the LSF office.

Napoleon's job includes writing programs for the law school, and making sure the equipment is working properly. He said he is currently working on a program to help keep track of a student's academic progress during his years here, a task currently done by hand.

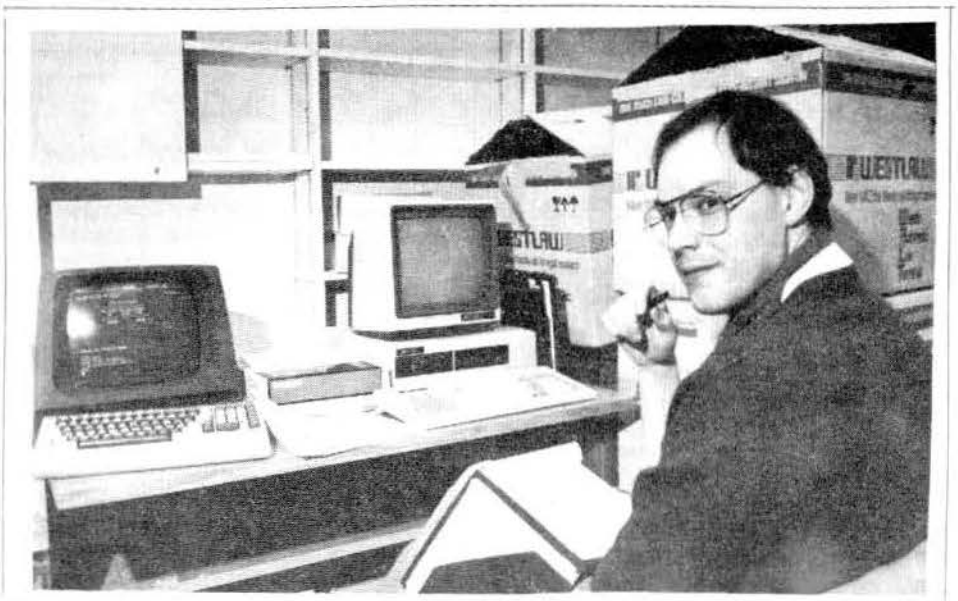
For the student who knows nothing about how to use personal computers, and would like to get over his or her computer phobia, Napoleon suggested classes available at the micro-computer education center, in the education building. The classes are free, generally are not very long, and "a beginner who wants to learn about computers couldn't find an easier way to doit."

The University also already offers a number of other computer services that many students are unaware of. Law School Senate President Russell Smith, who along with other senate members has recently become interested in the computer controversy, explained how the system is set up.

There are the microcomputers – the IBMs, MacIntoshes and Apples most commonly used – in various places around the University, and there is the Michigan Terminal System (MTS), a more powerful mainframe system.

Starting last semester, each student had a $50 request account, from which he could use MTS. According to Smith, the mainframes are better for statistical analysis and word processing large documents because of their size and speed. They can also be used for conferencing and electronic mail.

Smith said the senate wants to let law students know what is available to them, not only in the university as a whole, but here at the law school. "It's great having six computers here, but no one knows how to use them," he said. They are working on computer education in the form of workshops and forums, possibly through the Computer Law Society.



Personal computer on Sub-two

Civil Rights In Schools

from page one

more than weapons. "I am convinced that a hidden agenda is the detection of drugs."

In addition to being violative of the students' Fourth Amendment rights, Harvey also claimed that the searches were grossly ineffective. To this date, the sweeps have turned up only six weapons, while 83 weapons were discovered by more traditional methods, such as tips from informants. Harvey concluded "To get six weapons, 32,000 students were detained and searched for two hours each."

If, in reaction to the ACLU suit, the Detroit School Board publishes a new set of standards for the searches and equips the schools with a stationary, walk-through metal detectors, it will be more difficult for the ACLU to win a case brought to stop thesearches.

Harvey admitted that even within the ACLU there is substantial debate as to the constitutionality of stationary, walk-through detectors. But she said that she would want to press on with the litigation. "Unless we are willing to bring cases we know will lose, the voice of the opposition will be lost in hard times like the ones that are coming."

Harvey said that when the ACLU originally brought suit to stop the sweep searches, there was virtually unanimity in the Detroit community and press as to the need for the searches. She claimed to have turned public opinion around by "exposing the sweep searches for what they are – a very ingenious public relations move for Mayor Coleman Young."

Harvey also talked about other cases the ACLU is involved in, including a suit against Brooks Patterson, the prosecutor for Oakland County, attempting to stop his petition drive to get the death penalty on the ballot in the next election. She encouraged students to get involved, saying, "The ACLU needs you more than anyone else."

The speech was sponsored by the University of Michigan chapter of the ACLU. Students interested in the Patterson case or in helping out on other ACLU projects should talk to Fred Campbell, president of the local ACLU chapter.

Shapiro Explains Courtroom Advocacy

By LINDA KIM

Judges are not giving lawyers high marks for how well they do in oral arguments. Justice Douglas, for instance, said 40% of the arguments he heard were "incompetent performances."

"And this dreary diagnosis is one any of us can confirm by spending a day in court," said attorney Stephen Shapiro, who spoke on effective oral argument tactics to a full house in Room 100 Monday afternoon.

Shapiro speaks from experience; he has worked on more than 400 U.S. Supreme Court cases, and has personally argued well-known

Steve Shapiro

decisions such as *Keeton v. Hustler*, and *NBC, ABC, and CBS v. FCC and Carter-Mondale Presidential Committee*. He is currently a partner at Mayer, Brown & Platt in Chicago.

Briefs are important because they introduce the court to your case, they let you explain it in your own way, without interruptions, and they stay with the court long after your argument is over.

"Brevity, clarity, and vividness" are the keys to good brief writing, Shapiro explained. These can be achieved by following writing tips such as: use short sentences, active verbs and short paragraphs; don't use big words; try not to write like a lawyer, that is, using legal jargon; and don't call the opponent names.

Shapiro's speech was sponsored by the Case Clubs and the Campbell Competition.

Shapiro offered practical suggestions on how to write effective briefs and how to argue cases before a court, noting that when he was in law school, he took the wrong approach to oral advocacy. "We kind of stumbled through moot court without any coaching," he said, "learning from the bad techniques of others."

Among his suggestions on "how to be superb" in oral arguments, Shapiro said you should think of them in terms of the judge. "The court does not expect to give you an uninterrupted interlude of speech." Shapiro explained that judges will use you to clarify the record, see the scope of the claims, and sometimes try to expose the weaknesses in yourcase.

Shapiro also laid out what he called "the Ten Commandments" of oral arguments, which seemed equally applicable to preparation for The Big Game. These included getting to know your court, reviewing briefs from the point of view of a skeptical, hostile judge, practicing your argument, becoming an expert on your topic, and thinking about possible hypotheticals judges could pose.

The substance of an oral argument, Shapiro said, is designed "to give the common-sense, gut-level reasons why you should win." In doing so, you should "go for the jugular vein," and bring out your strongest point first.

During the actual delivery of an oral argument, Shapiro said you should not read verbatim from your brief or any other written statement, but use an outline or 3x5 cards to remember what points to cover. And, he added, be courteous to the court – addressing judges as Your Honor, etc.

Brief writing in a lot of ways is more important than oral arguments, according to Shapiro. "Most people have more speech than writing skills," he said, noting that many get early experience while arguing with brothers and sisters.

Notices

NUCLEAR DISARMAMENT: There will be a meeting on Thursday, January 30, at 7:00 p.m. in Legal Research 116 (NLG Office) for all students interested in networking with other Ann Arbor area groups on nuclear disarmament issues. Watch for the petition circulating this week and next. Also, jot down Tuesday, February 18, 4:00 p.m. on your calendar. This is the tentative date for a vigil outside the Federal Building in downtown Ann Arbor. Please join us this Thursday.

LSSS Sports Committee is sponsoring a basketball tournament at the Colosseum on Saturday, February 15th, with sign-up for men's and coed teams this Thursday and Friday, January 30th and 31st. Cost is $13 per team and the tentative times are 8 a.m.-1 p.m. A coed volleyball tournament is scheduled for the same day at the Colosseum from 6 p.m.-11 p.m., with signup this Thursday and Friday. All events are contingent on enough teams signing up to make gym rental economical.

Drop Box in the Senate office for outlines from all courses for the new outline bank. Drop by with your outlines between 10 and 3, labeled with course name and instructor. Outlines will be returned to you if you put your name and phone number on the outline.

The Journal of Law Reform has recently published a collection of essays on legal education which would be of interest to many students because the essays are written by Michigan law professors and often address the Michigan Law School community. Copies of the issue are on reserve at the library's main desk under "Essays on Legal Education" and can be purchased from the Journal, S-324 of the library, for $5.00 each.

WHY ARE YOU HERE?: Thurs., January 30th, at 7:30 p.m., there will be a National Lawyer's Guild meeting. Topic: Why Am I Here, and What Can I Do About It? Speakers: Deborah Johnson, Managing Attorney, Legal Services of Southeastern Michigan; Joe Slater, 1986 graduate. Refreshments will be served. The meeting will be held in Room 132, Hutchins Hall.

Arts

Redford & Streep Dazzle Out Of Africa

By Jim Komie

When I was young, anything involving Africa excited me. From King Solomon's Mines to the life-size dioramas in Milwaukee's Natural History Museum, I couldn't get enough. Only dinosaurs thrilled me more.

As an alleged adult, dinosaurs have lost their sway over me. Africa has not. When I see a picture of a native warrior, all decked out in straw and feathers, I wonder what he thinks about. What goes through his mind?

The most striking image in Out of Africa involves a band of Masai tribesmen. Karen Blixen, played by Meryl Streep, is leading a small caravan across the dangerous, unsettled plains, when, suddenly, all of her native hands get very quiet. Her right-hand man points and whispers to her "Masai," and then Pollack, the director, shows them to us. Eight or nine men, dressed in wild tribal outfits and carrying shields, running as a silent group across the plain.

The Masai represent Africa, wild, verdant and mysterious Africa. Denys Finch Hatton, played by Robert Redford, explains to Blixen how the Masai die if they are put in prison because they have no conception of the future A Masai thinks that be will never be let out, so he dies. The parallel is obvious — Africa , like the Masai, cannot be caged in by European settlers.

"Caging" is the central metaphor of Out of Africa, and Karen Blixen is the cager. The lion-tamer spirit pervades all she does. She tries to grow coffee on land that never has supported coffee before. She tries to cage in Denys by making him give up his life of no commitments. And Karen tries to get Africa down in words, capturing Africa, binding up experience in a sentence.

At one point, when Karen is trying to establish a school to teach the native children how to read and write, Denys demands of her "Are you trying to turn them into little Europeans?" The viewer should ask much the same question of the movie, "Are you trying to turn this story of Africa into another European love story?" Streep and Redford dancing by campfire on safari turn into the Fred Astaire and Ginger Rodgers of the Serenghetti.

All of the above does not mean that I did not like the film. As a love story, Out of Africa is very well done. But Out of Africa presents itself as more than a melodrama — it demands to be taken seriously.

I don't like a film that comes on like a law professor, telling you how intelligent it is with every frame or breath. "Oh! It's okay to like *this* movie." I have more respect for a movie like The Terminator that doesn't clobber you over the head with how well made it is.

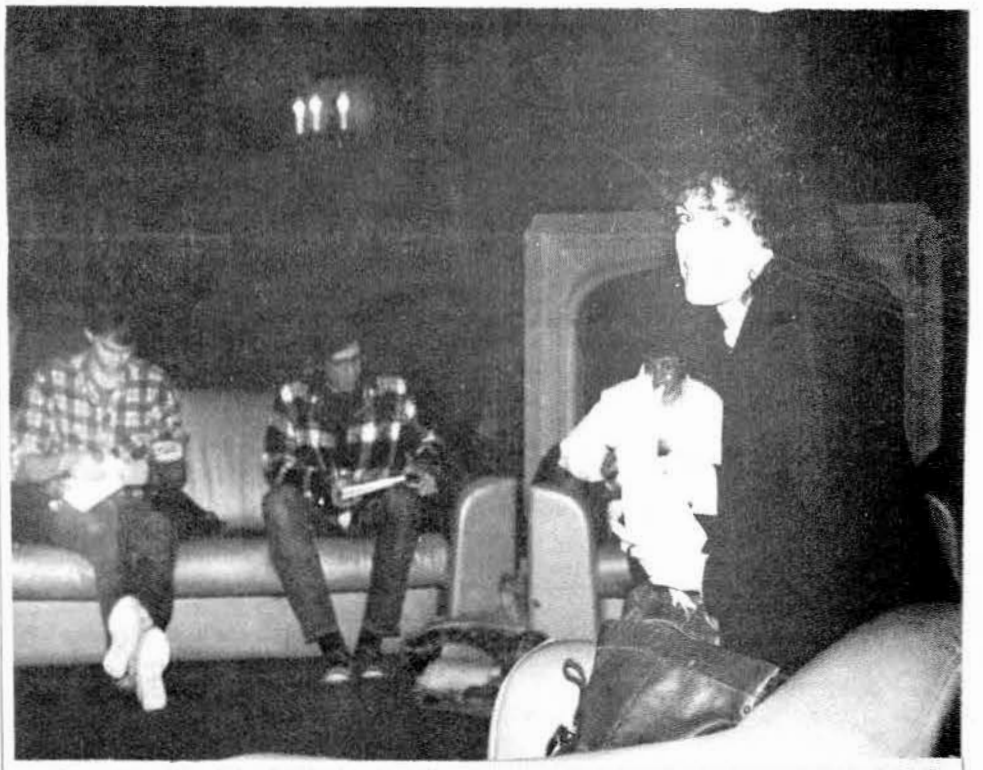
Still, Out of Africa is well made. As usual, Meryl Streep is very good, though I wish she'd lay off of the accents. What does her real voice sound like? At this rate we'll never know. As Denys Finch Hatton, known throughout Africa as "Mr. Zen," Robert Redford seems a bit rusty. In his first few scenes, he seems like he's talking to himself, to someone on the set, or to anyone besides Streep.

But as the movie presses onward, Streep and Redford come together both as performers and characters. By the time of the climactic confrontation as Denys prepares to leave on yet another safari, there's been enough good scenes to make us care about the characters. I'll never forget Redford washing Streep's hair by the bank of a river. He's singing and suddenly they both get very quiet, and all we hear is the running water. Sexual tension floods the theater — wet, but effective.

Out of Africa takes its name from the novel by Isak Dinesen but the movie is a hodgepodge of the novel and Dinesen's short stories. The screenwriter has made the focus of the movie the romance between Blixen and Finch Hatton. This is good box office strategy, but betrays the hollowness of Hollywood's claim that it is now making "movies for adults." Sure, Out of Africa is not about teenagers and their goofy hijinks, but it's not The 400 Blows either.

Never as complicated as it pretends to be, Out of Africa is nonetheless a very enjoyable and pretty movie. So go and see it, but don't think that you're any better than the people behind you waiting to see Rocky IV

What has a really long, fiery tail and goes "zoom" in the sky? Need another hint? Professor Bishop is probably the only member of the faculty to have seen it befo e. Give up? It's Hutchley's Comet, as spotted by the Res Gestae's Tom Morris. Not to be confused with the more glamorous Halley's Comet. Hutchley's Comet appears in our skies every 93 years, as opposed to every 76 years for Halley's Comet. We are sure that the second clue would not apply to Halley's Comet. So grab your binoculars and camp out in the middle of the quad.



Students learn to dealt with the pressures of law school at a St ess Management Workshop on Mnnday night. Sponsored hy the Lawyer's Cluh and Law School Student Services, the workshop is pa t of Stress-Less Cut-Loose Week. Other events include a Learn-To-Laugh Film Festival on Wednesday, 5:30-7:30, Game Night on Thu sday, 7:00 - midnight, and a Mocktail Party, on Friday, 8:00-1:00. All esents will be held in the main lounge of the Lawyer's Club. So take time off from your studies and learn how to relax.

Remainderman

By Art Siegal

want a foreigner drive

White Castle: The Taste Hunter Can Live Without

By Steve Hunter

Recently, it came to my attention that there are actually some people out there who have never been to a White Castle restaurant. Most of you deprived folks aren't from the Midwest, where White Castles flourish.

To begin with, the White Castle ambiance is without peer. I've known people to have been chased out of them by Cro-magnon types, I've seen people take their prom dates to White Castle, but mostly I've seen many, many drunk people at the restaurant. My personal rule of thumb for White Castle dining is never go without either: a) having had something to drink, or b) it being midnight. Both is preferable.

Then, of course, there is the White Castle reputation. I've heard of it referred to as White Casket, White Death, or even Why-tay Casalls (spoken with a French accent), for the continental flair. As for the burgers themselves, they are known almost universally as "sliders." If you ever eat one you'll understand why in an instant.

The new should always start out with the regular White Castle burger, but make absolutely sure you don't watch the people prepare them. If you do, you'll see some 300-year-old woman slap a frozen, thin wafer of meat on a grill and cook it until most of the ice has melted. The result is a fairly soggy burger, (but they sure do slide). The meat is well seasoned with some of the most tasteless onions you'll ever find. Personally, I think they are there to hold the burger together, but one can never be sure. One of these delights will cost around 30¢ (prices may vary).

Incidentally, I have often wondered why White Castle has all these octogenarian women staffing their restaurants rather than the usual crop of juvenile delinquents you'd find at Burger Doodle. I suspect it's because W.C. is open all night in most places, and the kids need time to do their homework, but I digress.

Next on the menu is the double White Castle. Double everything I said about the regular White Castle and there you have it. But I forgot to tell you about the pickle they put on every burger they sell. Where they ever find cucumbers small enough to make these pickles is beyond me. The reason they do it, though, is obvious, once you've seen a White Castle burger. Since the burger itself is about the size of a silver dollar, it is necessary to have incredibly small pickles to make the meat look like it is more than something you could swallow in one bite.

Add cheese and you have the essence of the White Castle cheeseburger and double cheeseburger. The cheese itself is golden, and I would bet my tuition money that it is "cheese food."

My personal favorite on the menu is the White Castle chicken sandwich. Few people venture away from the "sliders," but they don't know what they're missing. The chicken sandwich is almost as good as the kind you get at your finer restaurants, (like McDonald's), except for the fact that the outer portion is a little too crusty.

Be warned, however, faithful eaters, do not, I repeat, DO NOT order the fish sandwich. Avoid it at all costs. I unwarily ate one once, and learned a great lesson. As soon as one takes his first bite of the sandwich, he immediately wonders just what *kind* of fish it is that he is eating. Carp leapt to my mind.

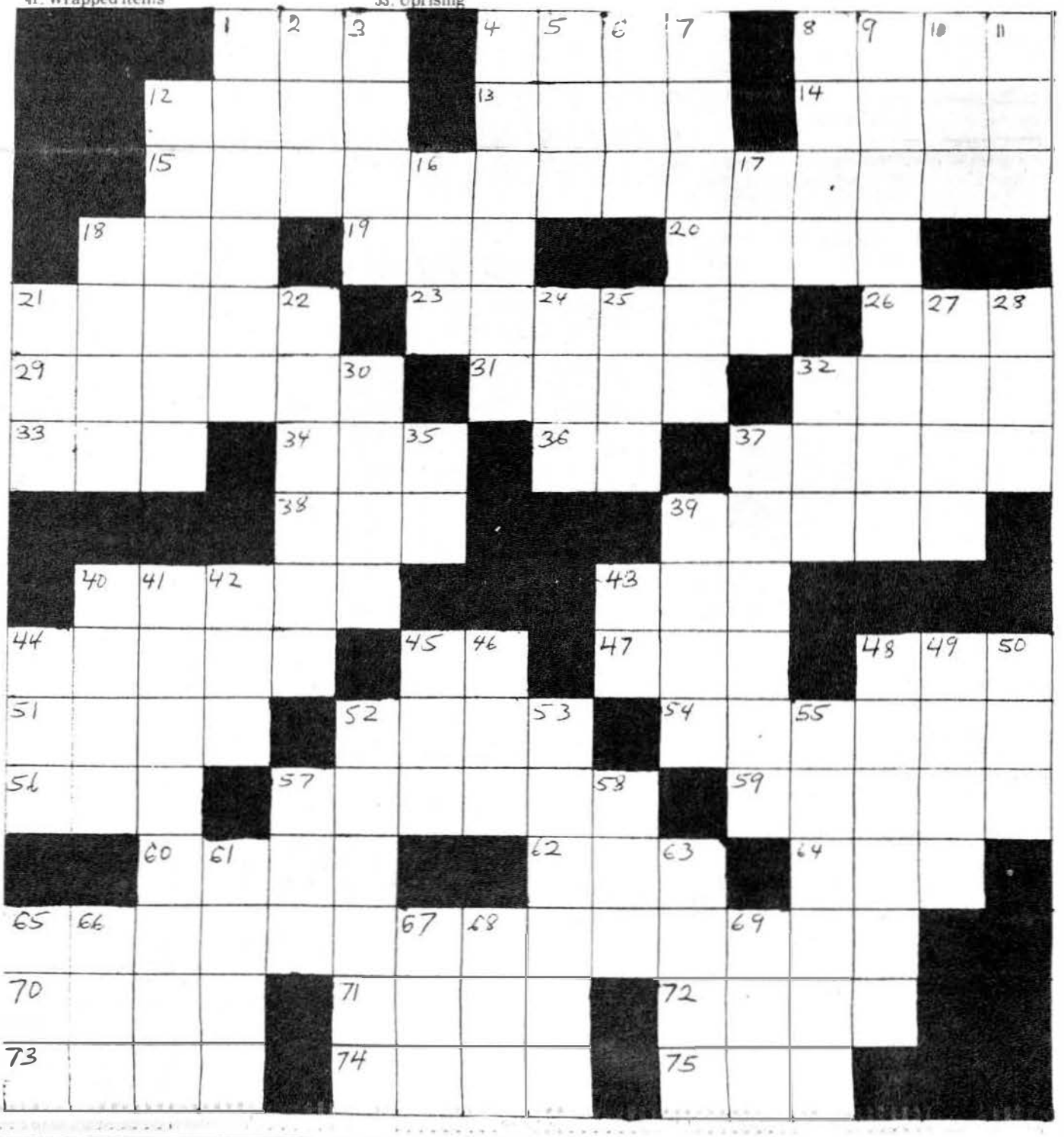
But lest I sound negative about White Castle, I must point out that the restaurant has a very loyal following. As the commercials attest, many people go to great lengths to get White Castles, I think for the same reason some people run marathons or jump out of airplanes.

Crossword

Joseph Mazzarese

ACROSS
1. Likely
4. Gymnast Korbut
8. Dry measure
12. Sword
13. Common past participle
14. Same (prefix)
15. Place for review (2 words)
18. Right to enjoy property
20. Skirt prefix
21. Opera solos
23. Impassive
26. Greek letter
29. Pale
31. Man's name
32. Lies (slang)
33. Clever
34. House mem.
36. Literary supervisor (abbrev.)
37. Sky (ital.)
38. Rodent
39. Inventor of telegraph
40. Clothing protector
43. Ending with harm or thought
44. Missile
45. Longball, for short
47. Unreturned service
48. Exist
51. Claim on debtor's property
52. Change direction
54. Tossed
56. Sts.
57. Trees
59. Article 2 deals
60. Ireland
62. Vehicle
64. Head move
65. Jury's realm
70. Comedian Johnson
71. Christmas
72. Asian Country
73. Russian paper
74. Help
75. Patriotic org. (init.)

DOWN
1. Attempt to reverse
2. Vim
3. Set ball in place
4. Spheroidal
5. Meadow
6. Acquire
7. Weak
8. Poor servant
9. Things courts balance
10. Dog
11. Set
12. With little trouble
16. Article (Spanish)
17. After El, in fiction
18. Asian river
21. Donkey
24. Metallic rock
25. Cover
27. Fit
28. Mil. service org.
30. Free from habit
32. Tree
35. Exercise (mil. abbrev.)
37. Houseplant
39. Plethora
40. Like the Sudan
41. Wrapped items
42. President, for short
43. Scale tone
44. Legal ref.
45. Border
46. Revolutionary (abbrev.)
48. Parcels out
49. Woodwind part
50. Norton and Meese
52. European city
53. Uprising
55. Ill will
57. Three (prefix)
58. British A.F.
61. Bad day for Caesar
63. Newfoundland (abbrev.)
65. Obese
66. Revol. group
67. Lump
68. Spot
69. Road Club



Feature

Fear, Loathing And Ruf In Lake Tahoe

By Kevin Ruf

This is how it happens. It was just a few weeks ago. I drove to Lake Tahoe to spend a few days skiing with my old friend Mark. I was really tired from a long, lonely drive through the thick fog that was making the papers by causing accidents in the San Joaquin valley. But a couple of beers and maybe an hour after I arrived, I was off to spend the night drooling, gagging, and choking on a felt-lined table somewhere on the South Shore, ready to move on in a grand gambling adventure begun over five years ago by Mark and me.

That night I lost over $500 within the first hour of gambling.

I went nuts. It was as though I was eating potato chips or something. I just couldn't stop. The money poured out of my pockets. Mark was winning big along side me, which forced me to hate him. He even lent me some money, so I could lose even more. Never gamble with a friend, because when it comes down to it there are no such things as friends just winners and losers. And when you gamble you gamble alone: as Mark "killer" Adelson once said, "It's just you and the universe!"

From across the casino an acquaintance from college saw the damage I was doing to myself.

He came to me, wanting to interrupt my self-flagellation, to save me from myself. "You're getting beaten like a red-headed stepson" he said, "run out of here, get the hell out of here!"

The dealer winced at his swearing. I didn't budge. I was too close now. I had come too far. I was losing and losing bad. I couldn't afford it. I was ruining my vacation. I was sweating. Inside, I was going nuts. And it wasn't like I was numb or anything. I mean I did feel each dollar as I lost it. The $200 dollar bets (there were a couple) were 200 punches in the gut when I lost, and 200 sweet kisses when I won. Only, well you know, I was losing. And each loss squeezed me tighter until I could hardly breath, and each time renewed I vowed inside to not let HIM get me down. I would bet still more. I can't lose twice in a row, I would think. And then I lost twice in a row. Definitely not three times, I would think. And then I lost three times.

There are very few things so frustrating as losing lots of money gambling. You begin to develop this very special relationship with GGod. Not your regular God. Not the one you kneel beside your bed and pray to each night. But the other one. This is the GGod who isn't concerned with floods or famine or even whether you get an "A" on your next final. This is the Gambling God (or GGod) who determines whether you get an ace and a king or a ten and a five. Sometimes GGod really plays around with your mind – I swear to GGod when He made me lose 12 times in a row I almost went insane!

You see, I thought that if I kept betting big even in the face of adversity I would earn GGod's respect. I figured out later that it's one of those Catch-Twenty-Two's you hear so much about (usually having to do with welfare). You have to have GGod's respect to win, but GGod *only* respects a winner.

By the end of the night Mark was pulling in big money. Over and over his bets would double, and the black chips (the hundreds) multiplied. At times he was over $1000 up. And I went and went and went . . . right down the tube. When the smoke finally cleared (and it was a quick death) I had lost $500 and didn't understand why I had allowed myself to do such a stupid thing.

Mark tried to console me. He even paid the *whole* $1 tip to the parking attendant. "Keep your 50¢," he said to me. Oh, but now I am being bitter.

On the drive home I kept talking tough and shaking my bead, and lying that it had been at least "a good experience." Mark didn't say a word. He'd lost at gambling enough times to know.

So how was it that a regular, wholesome guy who changes his underwear and bathes regularly allowed his once-a-year ski trip to explode into millions of bits, like chips scattered across a bad luck craps table? How was it that I lost nearly $500 dollars in maybe an hour that first night and then kept gambling on other nights, and other days, and even today between bouts at the typewriter, when the hysteria was gone, and when by all accounts I should have seen the futility of it, the sheer stupidity of it?

The "white moment," no doubt, is responsible. But first some generalizations.

There is truly something sick about the gambler's mentality. It is, to start irrational. The odds are against you. You hear that all the time, from people who know. The odds are against you! But you are mystical. You are special. The odds, you think, don't explain your case. You gamble despite the odds. And you lose.

Of course there are exceptions. Like Uncle Ted, or Aunt Lizzie, you might win $100 bucks and walk away, cash in hand. But unless you somehow change the odds, pure luck can only last so long; those cold hard statistics will catch up to you.

Or you could use some system. That's when you change the odds, and people who can do that are far from irrational. They are smart, and they are *truly* lucky. They are lucky in the luckiest way because they walk out of casinos with bundles of money . . . until they are found out and told to leave the casinos and never come back, and then they have to wear all sorts of silly costumes with weird wigs in order to keep gambling, and sometimes they get beaten up, too.

Most gamblers don't have a system, though. Most of them go out and just sort of hope. Some probably spend their whole lives fumbling along, closet gamblers, eventually losing thousands of dollars on every imaginable kind of bet, but never so compulsive to cause themselves serious damage at home or at work. Always they will press on, like drunken water buffaloes buying new furniture after a mud slide, spending only what they can afford, but wasting good money – you know how drunken water buffaloes are. And the biggest waste of all is when people spend their money on the state-run lottery, where the odds of winning are inhumane.

They are, we are, all searching for the elusive "white moment." The white moment is the opiate of gambling. It is what keeps us coming back.

It can be one great momentous win: Over 5 years ago Mark and I were on a summer camping trip and stopped over in Lake Tahoe. We were only 18 and didn't have much money. Somehow, Mark won over $10,000 and in one day, and, honestly, his life has never been the same. He has since lost three times that. Mostly because he believes he can "do it again."

Or it can be a series of smaller wins, which *sort of* explains my case: When I was 8-years-old I won $3.75 on a slot machine in Coyote, Nevada. More recently, John "The Greek" Zavitsanos bet me $50.00 that Loyola of Chicago would be in the college basketball Top 20 by the end of the season. No kidding. Loyola, by the way, is currently 4-11. (Of course, you can't count on a consistent supply of people willing to blindly support their alma mater, no matter how lousy the team and no matter what the cost, but, look around, there are a few of them out there – Go Irish!)

But what the white moment is really about is hope. Not the recreation of some past glory, but the chance of glory tomorrow, or the next day. The chance to win the next bet. The chance to win. Chance is what gambling is really about. I mean there has to be that risk, the sense of daring. That's when the adrenalin flows, and it feels great.

Before this gets too hokey, let me end this story with another story, that of Carrot Top Goldfarb. Carrot Top was one of the most famous bowling hustlers Motown ever produced. He could really play. He once beat the great Ed Lubanski on that legendary day in July of '56 when the temperature was over 90 degrees and Carrot Top was still weak from a cold, and the Thunderbird Lanes were packed solid and the stores were closed and everyone and everything said the Carrot Top couldn't pull it off.

Carrot Top was a gambler, sure. And he was very successful at it. He gambled with his bowling skill and usually he won. You might think that is how Carrot Top would want to be remembered, as a gutsy devil-may-care bowling maniac. But as his recent John Hancock Insurance commercial suggests, there is more to life than winning and losing, even for Carrot Top Goldfarb.

Carrot Top (over darkness): "Yesterday I was a bowling shark. Today . . . I am retired. (Slow motion footage of Carrot Top rolling strikes in his younger years.) How do I want to be remembered? As a good husband, and a good father. That's it. That's life. That's what life is."

Think about it.

So how was it that a regular, wholesome guy who changes his underwear and bathes regularly allowed his once-a-year ski trip to explode into millions of bits, like chips scattered across a bad luck craps table?

Law In The Raw

By Mark Berry and Lionel Glancy

Bussing and Biting

We can never be too sure about those we choose to hang around with – or even kiss.

In Harrison, Michigan, Trina Rowland has been arrested and charged with assault with intent to maim and aggravated assault. She is accused of biting a 1.5 inch section of David Davis' tongue while the two were kissing.

Rowland is faced with a maximum of 10 years in prison for the injurious smooch. And, we can bet that Davis will be more careful where he puts his tongue in the future.

Detroit Free Press, January 15, 1986

Schoolboy's Revenge

After extensive investigation, the Mount Dora, Florida police arrested an individual, charging him with five counts of extortion. Over a six month period, the suspect had collected $170 using threats that he would beat up his victims. In order to pay off the extortionist, the victims had been borrowing money from their friends and relatives.

All of the victims were eight or nine years old. The extortionist was their classmate, also nine years old.

Cleveland Plain Dealer, June 1, 1985

Identity Crisis

Sitting on a bench outside of the courtroom, Paul Plotnick was representing a woman who was seeking an increase in child support from her former husband. Plotnick had not handled the divorce and did not know what the husband looked like. A man began walking toward them down the corridor. His client turned to Plotnick and said, "Does that look like my former husband?"

"Well, you had three children with him. Don't you know what he looks like," Plotnick replied.

She responded, "It was always dark."

ABA Journal, January 1986

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